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September 21, 2012

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Superintendent of Securities, Nunavut

c/o

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, Tour de la Bourse
Montréal, Québec H4Z 1G3

John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8

Dear Sirs/Mesdames:

RE: Request for comments on Consultation Paper 25-401 – Potential Regulation of Proxy Advisory Firms ("Consultation Paper")

In response to the request for comments on the Consultation Paper issued on June 21, 2012 by the securities regulators of all provinces and territories of Canada, we are pleased to submit the following comments.

This letter represents the general comments of certain lawyers of Fraser Milner Casgrain LLP's securities practice group and does not necessarily represent the views of the firm generally or any of its clients. These comments are submitted without prejudice to any position taken or that may be taken by the firm on its own behalf or on behalf of any of its clients.

Following our review of the Consultation Paper and five main concerns identified therein, we believe that adopting a best practices approach would best serve the interests of all market participants. Albeit we acknowledge the need for a regulatory framework for proxy advisory firms, we are of the opinion that implementation of such a framework should be incremental as to avoid unforeseen external effects or the law of unintended consequences. For now, we consider that the concerns set forth in the Consultation Paper can be addressed efficiently by providing proxy advisory firms with certain recommended practices and guidelines, rather than adopting a rule-based approach. That said, we would suggest that in developing such recommended practices and guidelines, the securities regulators stress the importance of managing conflicts of interest and correcting inaccuracies in voting recommendation reports with a view of preserving market integrity and ensuring quality of the shareholder vote.

With regards to the development of the best practices applicable to proxy advisory firms, we provide the following comments for your consideration:

1. **Potential conflicts of interest**

As mentioned above, we believe that the best practices should put particular emphasis on the management of conflicts of interest within proxy advisory firms, since insufficient control in this regard could seriously impact the integrity of the voting process. In keeping consistent with the approach we recommend, we agree with the securities regulators that outright prohibition of conflicts of interest would be excessive. However, we support a two-sided approach based on (i) the adoption of policies and procedures aimed to identify and mitigate conflicts of interest, and (ii) extensive disclosure of such policies and procedures and of all conflicts of interest that arise in connection with the issuance of vote recommendations.

In particular, while we believe that conflict of interest policies and procedures should be developed by the proxy advisory firms themselves based on their respective organizational structures, we suggest that securities regulators elaborate certain recommended features (e.g. a code of ethics dealing with employee conflicts and ownership conflicts, strong ethical wall policies, etc.) to achieve a certain level of consistency and efficiency in the policies and procedures of proxy advisory firms in Canada. Furthermore, to ensure that those policies remain adequate and allow proper management of conflicts of interest, proxy advisory firms should be encouraged to set up an internal committee to review the effectiveness of policies and procedures. The establishment of such a committee would also facilitate a dialogue between proxy advisory firms and other market participants when issues arise or when additional details on disclosed conflicts of interest are requested.

We find that the practice of certain proxy advisory firms to issue voting recommendations on governance matters while concurrently providing for-profit consulting services to the same issuers is a serious point of concern and potential threat to market integrity. Albeit ethical wall policies and physical segregation of proxy voting and consulting services would help address this concern, we believe that the recommendation should be expressly made to proxy advisory firms to clearly indicate, on the front page of each proxy report, whether the issuer is a client or prospective client of the consulting branch of the proxy advisory firm. A mere boilerplate

statement in the report to the effect that the issuer may be a client of the proxy advisory firm is not, in our opinion, sufficient to arouse readers' attention.

In addition, with regards to employee conflicts of interest, we would suggest that policies or code of ethics require that any analyst and/or reviewer who holds a personal ownership interest in the stock of an issuer with respect to which a matter is put to a vote declare such interest and be prohibited from issuing a recommendation in connection therewith.

On the question of disclosure, we agree that proxy advisory firms should publish their conflict of interest policies and procedures on their websites. We further believe, as indicated above, that conflicts of interest should be clearly and fully disclosed in the proxy reports, with a reference or link towards the policies and procedures found online.

2. **Lack of transparency**

We understand that this concern relates to the potential influence of vote recommendations on investors who do not have access to the associated vote recommendation reports prepared by the proxy advisory firms.

In line with the approach suggested in the Consultation Paper, we also believe that best practices for proxy advisory firms should be to encourage disclosure of all general internal procedures, methodologies, guidelines, standards, assumptions, data gathering procedures and informational sources. Such an approach would not infringe upon the private nature of the reports given to their clients on a subscription basis. Furthermore, disclosure of general procedures and guidelines would provide non-subscribing investors with an opportunity to better understand and evaluate vote recommendations that are made publicly available through press releases.

That being said, it must be acknowledged that the analysis provided in the private reports to clients is not necessarily a straightforward application of general procedures and guidelines; some matters require a more nuanced approach. Consequently, non-subscribing investors could potentially be misled and assume that only general procedures and guidelines were considered in the making of a specific vote recommendation. In our opinion, the solution to this problem lies in educating market participants on this very fact. In other words, it would be important that disclosure help market participants understand that, in certain cases, other undisclosed factors or principles are at play in the making of a vote recommendation. Consequently, market participants will be able to better understand the context in which vote recommendations are issued and not be unduly influenced by general procedures and guidelines.

3. **Potential inaccuracies and limited opportunity for issuer engagement**

As outlined in the Consultation Paper, the vote recommendations and associated reports issued by proxy advisory firms might be heavily relied upon by certain institutional investors, as well as retail investors where such recommendations are released publicly. Thus, in addition to efficient analysis procedures, it is of the outmost importance that the underlying data put to analysis be

accurate. Voting recommendations issued on the basis of incorrect or false facts may mislead investors, resulting in ill-informed voting decisions.

For the above reasons, we believe that best practices for proxy advisory firms should promote increased dialogue with issuers and greater engagement of the latter in the preparation of the voting recommendation reports. In our opinion, those two key objectives could best be achieved by the implementation of a policy aimed at dealing with issuer comments on draft reports, as is suggested in the Consultation Paper. Contrary to the conflict of interest policies and procedures which need to be tailored in accordance with the size and structure of the proxy advisory firms, we believe that the interests of all market participants would be best served with harmonized policies on issuer feedback among the different proxy advisory firms. As such, we suggest that securities regulators consider designing a standard policy on this matter for consideration by the proxy advisory firms.

We respectfully submit that the particulars of such standard policy should include the following: (i) issuers should be given a minimum of 48 hours to review and comment on each draft vote recommendation, (ii) upon receipt of comments from the issuers, the proxy advisory firms should indicate to the former whether they intend to amend their reports accordingly, and (iii) in the negative, issuers should be allowed to state their concerns in a designated section of the reports. We believe that this process should not involve a third party, including with respect to contentious issues, but rather should focus on providing investors with the most complete and accurate information. Item (iii) above supports this idea by allowing the investors to assess vote recommendations based on input from both proxy advisory firms and issuers. Also, in line with our suggestion above of an internal committee for conflicts of interest, we believe proxy advisory firms should designate a representative in charge of facilitating the dialogue with issuers with respect to the review of draft vote recommendations.

We would further suggest that policies dealing with issuer engagement be publicly disclosed on the websites of proxy advisory firms.

4. Development of corporate governance standards

With regards to the potential impact of the policies recommended by proxy advisory firms on Canadian issuers and the related concern of a "one-size-fits-all" set of governance rules, we are of the opinion that best practices should recommend that such policies (i) be adopted pursuant to transparent procedures inviting market participants to voice their views before and after each proxy season, and (ii) factor in certain key differentiation factors between the various types of issuers (notably, their size and the industry in which they operate).

5. Reliance by institutional investors

With respect to the reliance issue outlined in the Consultation Paper, our main concern is with automatic voting. In light of the stewardship responsibilities imposed on institutional investors, we submit that automatic voting should be confined to routine matters and not apply to highly complex questions (such as M&A transactions) to be voted upon by shareholders.

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We thank you for allowing us the opportunity to comment on the Consultation Paper. If you have any questions or comments, please contact Charles R. Spector at (514) 878-8847 or Giancarlo R. Salvo at (514) 878-8894.

Yours very truly,

FRASER MILNER CASGRAIN LLP

Per:

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